

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

JENNIFER FINNERTY, Individually, and as
Personal Representative of the ESTATE OF
CULLEN FINNERTY,

Plaintiff,

v.

NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION,

Defendant.

Case No.

Related Criminal Case:

United States v. Dr. Michael Weiss

Case No. 16-20268

U.S District Court

for the Eastern District of Michigan

Hon. Matthew F. Leitman

Originating Case:

*Jennifer Finnerty v. National Collegiate
Athletic Association*

Case No. 49D01-1808-CT-033896

Marion County Superior Court

in the State of Indiana

Hon. Heather A. Welch

R. David Hosp (admitted; BBO No. 634091)

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**NATIONAL COLLEGIATE ATHLETIC ASSOCIATION’S PETITION TO OBTAIN
DEPOSITION OF MICHAEL WEISS, DO**

NOW COMES Petitioner National Collegiate Athletic Association (“NCAA”) herein, by and through counsel, ORRICK, HERRINGTON & SUTCLIFFE LLP, and respectfully submits this action for leave to take the deposition of Michael Weiss, DO (“Dr. Michael Weiss”):

1. Petitioner above is a Defendant in an underlying negligence case titled *Jennifer Finnerty v. NCAA*, which is pending before the Honorable Heather A. Welch in the Marion Superior Court in the State of Indiana (“Indiana State Court”), Case No. 49D01-1808-CT-033896.

2. The action arises from the death of Mrs. Finnerty’s husband, Cullen Finnerty, who died tragically in 2013 after being dropped off alone in the woods for a fishing trip and found days later. Mr. Finnerty was known to have a substance abuse problem and to have taken opiates the day he disappeared. (*See* Ex. 1, Complaint). The opiates were prescribed to him by Dr. Michael Weiss.

3. On October 26, 2016, in the U.S. District Court for the Eastern District of Michigan, Dr. Michael Weiss pled guilty to, *inter alia*, a felony charge in which he admitted that he unlawfully prescribed oxycodone pills to Mr. Finnerty and that his actions led to Mr. Finnerty’s death in *United States v. Dr. Michael Weiss*, No. 16-20268. (*See* Ex. 2, Dr. Weiss Rule 11 Plea Agreement (ECF No. 68)). In that case, Dr. Michael Weiss was sentenced to 84 months imprisonment in a federal penitentiary. (*See* Ex. 3, Judgment Order (ECF No. 86)).

4. Petitioner has obtained leave of the Indiana State Court where this action is pending to take the deposition of Dr. Michael Weiss. (*See* Ex. 4, Indiana State Court Order).

5. Upon information and belief, Dr. Michael Weiss is being held at a Residential Reentry Center (“RRC”) run by the Federal Bureau of Prisons and managed by the Residential Reentry Management Detroit field office in Milan, MI to serve out the remainder of his sentence

imposed in *United States v. Dr. Michael Weiss*, No. 16-20268. The RRC remains confidential and it is the NCAA's understanding that the parties will learn of the location once the NCAA's request to depose Dr. Michael Weiss is granted.

6. Fed. R. Civ. P. 30(a)(2)(B) requires leave of the Court to obtain a deposition of an individual confined by the Federal Bureau of Prisons.

7. Dr. Michael Weiss is a nonparty physician who may be liable for Mr. Finnerty's death because he over-prescribed opiates to Mr. Finnerty. On October 6, 2020, the Indiana State Court allowed the NCAA to assert a nonparty defense against Dr. Michael Weiss to protect the NCAA's right to present a defense and ensure the jury may equitably allocate any potential monetary damages. Thus, it is important for the NCAA to depose Dr. Michael Weiss about his relationship with Mr. Finnerty to develop and assert this nonparty defense.

8. Accordingly, Petitioner now seeks leave of this Court to obtain the deposition of Dr. Michael Weiss at the RRC facility in which he is confined at a time convenient to all parties.

WHEREFORE the NCAA respectfully requests this Honorable Court enter an Order granting leave to take the deposition of Michael Weiss, DO.

Respectfully Submitted,

ORRICK, HERRINGTON & SUTCLIFFE LLP

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Dated: December 30, 2020

CERTIFICATE OF SERVICE

I hereby certify that on December 30, 2020 a copy of the foregoing was served on the following counsel of record via first class mail and electronic mail.

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